

REMARKS

Applicant has carefully studied the Advisory Action of October 31, 2003 and the previous Office Action of June 13, 2003 as well as the Interview Summary of August 7, 2003. The present Request for Continued Examination and Preliminary Amendments are made in light thereof.

The Patent Office has rejected claims 1-47 under 35 U.S.C. § 102(e) as being anticipated by Myers et al. The crux of this rejection is that the anomaly within Myers et al.'s pulse stream is being construed by the Patent Office to be same thing as the reported amount. As the Advisory Action indicates, the Patent Office considers that the pulse stream of Myers et al. is an amount of fuel alleged to be dispensed, albeit in a different unit of measure from customary gallons or liters. While Applicant disagrees with this interpretation in the context of an anticipation analysis, Applicant herein amends several of the independent claims to recite that the present invention, as claimed, derives a fuel flow rate *value* and it is this fuel flow rate *value* that is being compared to the reference which is related to a flow rate of fuel. This element comes from original claim 21 and is supported in the specification. Claim 21 is canceled as redundant in light of the amendments.

As amended, the claim recites a fuel flow rate value, which corresponds to a numeric value indicative of a fuel flow rate, such as 4 gallons per minute. Since the claim recites a value, a pulse stream from a pulser does not anticipate the element. This interpretation is fully supported in the specification. Specifically, the title of the application, and the text at page 11, line 20-page 15, line 24 indicate that a value is being contemplated. The present amendment makes this explicit in the claims.

For an anticipation rejection to be proper, the Patent Office must show where each and every element of the claim is located. Further, the elements of the reference must be arranged as claimed. MPEP § 2131. The claims as amended have an element that is not shown by Myers et al. Specifically, the pulse stream of Myers et al. cannot be the recited fuel flow value and thus, Myers et al. does not anticipate the claims as they have been amended.

Claim 22 deserves special analysis. Throughout the prosecution of the claims, the Patent Office has not provided separate analysis for the claims, grouping them all into a single analysis. While Applicant has heretofore not objected to this approach, Applicant feels that such a grouped approach is not appropriate. Specifically, claim 22 has an element which is not present

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in claim 1 and cannot be located in Myers et al. Specifically, claim 22 recites "averaging reported amounts for a plurality of fueling transactions" Myers et al. does not disclose this averaging function. To this extent, Myers et al. does not satisfy the strict requirements to support an anticipation rejection of claim 22. Applicant requests withdrawal of the § 102(e) rejection of claims 22-26 in light of this difference. If the Patent Office disagrees, the Patent Office is invited to identify with particularity where in the reference this function is recited.

Claim 45 also deserves special mention. Claim 45 recites that a device remote from the fuel dispenser does the comparison. Again, nothing in Myers et al. teaches this remote comparison, and the claim is not anticipated. If the Patent Office disagrees, the Patent Office is invited to identify with particularity where in the reference this function is recited. In the absence of such proof, the Patent Office must withdraw the § 102(e) rejection of claim 45 at this time.

Applicant also reminds the Patent Office that the Myers et al. reference is commonly owned with the present application, and thus, Myers et al. is not available to support a rejection under 35 U.S.C. § 103. To this extent, if the claims are not anticipated, the claims are allowable.

In short, the reference of record does not show a claim element, and the claims 1-47 are not anticipated. Applicant earnestly solicits claim allowance at the Examiner's earliest convenience.

Respectfully submitted,

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